

**BEFORE THE INDIANA CIVIL RIGHTS COMMISSION
311 West Washington Street
Indianapolis, Indiana 46204**

STATE OF INDIANA)
) SS
COUNTY OF MARION)

**MARY E. WILLIAMS,
Complainant,**

v.

**DOCKET NO. 05224A
EEOC NO. TIN4-0667**

**HENRY COUNTY BOARD OF HEALTH,
Respondent.**

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

On September 11, 1979, Kenneth W. Maher, Hearing Officer in the above cause, entered his recommendation. Neither party has filed objections to that recommendation. Neither party has filed objections to that recommendation within the ten (10) day period prescribed by IC 4-22-1-12 and Ind. Admin. R. and Reg. §(22-9-1-6)-35(A).

Being duly advised in the premises, the Commission hereby adopts as its final Findings of Fact, Conclusions of Law, and Order those recommended in the Hearing Officer's Recommended Findings of Fact, Conclusions of Law, and Order which is attached hereto and incorporated by reference herein.

Dated: October 19, 1979

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HENRY COUNTY BOARD OF HEALTH,
Respondent.

RECOMMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The undersigned Hearing Officer was appointed to hear the above-captioned case and all parties were notified of said appointment by personal service on the their attorneys prior to the commencement of the hearing held on August 21, 1979.

Complainant, Mary E. Williams, (hereinafter "Williams") was present at the hearing and was represented by counsel, Ms. Donna Rae Eide and Ms. M.E. Tuke. Respondent, Henry County Board of Health (hereinafter "Board of Health") was represented by counsel, Mr. J. Alton Taylor. Mr. Jerry Cash, general manager of the Henry County Health Department was also present throughout the hearing. Other witnesses were separated by stipulation of the parties.

Having considered the official record, including the Stipulations of Fact filed jointly by Williams and Board of Health and Stipulations of Fact agreed to by attorneys for Williams and Board of Health in the final Pre-Hearing Statement dated August 9, 1979, the evidence admitted at hearing, the arguments of counsel, and being duly advised in the premises, the Hearing Officer hereby recommends the entry of the following Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT

1. Williams is a female citizen of Indiana. Tr. 11, line 2 Stipulation of Facts No 1.
2. Board of Health is an agency of Henry County, Indiana employing six (6) or more employees. Stipulations of Fact No, 2.
3. In December, 1973, the Board of Health sought applicants for the position of Public Health Trainee (Fourth Sanitarian). Stipulation of Fact, No. 3.
4. In December, 1973, Williams applied for the position of Public Health Trainee (Fourth Sanitarian) with the Board of Health. Stipulation of Fact No. 4.
5. In December, 1973, Williams was interviewed for the position of Public Health Trainee (Fourth Sanitarian) Tr. 15, Line 22.
6. In January 22, 1974 the Board of Health held a meeting at which the resumes and applications of the applicants for the position of Public Health Trainee (Fourth Sanitarian) were reviewed. Complainant's Exhibit D.
7. Only two applicants were considered for the position: Williams and Gary Bouslog. Complainant's Exhibit D, Tr. 67, Line 29.
8. The Board of Health selected Gary Bouslog for the position of Public Health Trainee (Fourth Sanitarian). Complainant's Exhibit D., Tr. 61, Line 6.
9. At the time Gary Bouslog was selected for the position, he had a high school degree and one (1) year of undergraduate college education Stipulation of Facts, No. 6.
10. At the time Williams was being considered for the position of Public Health Trainee (Fourth Sanitarian), she had a B.S. Degree in education with areas of study in general science, chemistry, and psychology and had work experience as a laboratory technician. Complainant's Exhibit A, Tr. 15, Line 24.
11. Gary Bouslog was less qualified than Williams for the position of Public Health Trainee (Fourth Sanitarian). Tr. 63, Lines 15 and 16.
12. Gary Bouslog accepted the position of Public Health Trainee (Fourth Sanitarian) at the starting salary of \$6,000.00 per year. Stipulation of Fact, No. 7.

13. On March 3, 1974, Williams found a position as a chemical technician with the Ball Corporation at the starting salary of \$600.00 per month, at which time her salary exceeded that which she would have received as a Public Health Trainee (Fourth Sanitarian) with the Board of Health, Tr. 22, Lines 48 and 49.
14. The reason cited by the Board of Health for hiring Gary Bouslog was that they thought he would be more apt to stay with the job longer than Williams. Tr. 63 and 64, Lines 16, 17, 18 and 19.
15. The job description for the position of Public Health Trainee (Fourth Sanitarian) for which Williams applied states that: "Preference will be given to the applicant with a baccalaureate degree or some work toward a degree in the health field". Complainant's Exhibit E, Pre-Hearing Statement, Line 5c.
16. Other past and present sanitarian employees of the Board of Health have college degrees. Tr. 54, Lines 24, 25, 26; Tr. 79, Line 88; Tr. 82, Lines 96 and 97; Tr. 84, Lines 99 and 100.
17. There is no evidence that the Board of Health made any attempt to determine if applicants for the position of public Health Trainee (Fourth Sanitarian) would remain at the job, other than the presumptions they made based on ties to the community and educational background of the applicants. Tr. 72, Line 55; Tr. 78, Line 82.
18. Williams ties to the community of New Castle were equal to, if not greater than Gary Bouslog. Tr. 13, Line 13; Tr. 69, Lines 44, 45, 46, 47, and 48; Tr. 78, Line 82.
19. There were jobs available in New Castle for persons without a college degree which paid more than \$6,000.00 a year Tr. 85 and 86, Lines 104 and 105.
20. At the time the Board of Health made the decision to hire Gary Boulog, they had no evidence that Gary Bouslog was less likely than Williams to leave the position with the Board of Health. Tr. 78, Line 82. Tr. 72, Line 55.
21. If Williams had been hired for the position of Public Health Trainee (Fourth Sanitarian) she would have been available for work on January 23, 1979. Tr 22, Line 46.

22. If Williams had held the position as Public Health Trainee (Fourth Sanitarian) from January 23, 1974 to March 3, 1974, she would have received \$692.16 (six hundred and ninety two dollars and sixteen cents) in wages calculated as follows:
 - a. \$6,000.00 per year divided by 52 weeks per year = \$115.36 per week.
 - b. \$115.36 per week x 6 weeks = **\$692.16**
23. Any Conclusion of Law which should have been deemed to be a Finding of Fact is hereby adopted as such.

CONCLUSIONS OF LAW

1. The Commission jurisdiction over the subject matter and the parties.
2. The complaint was timely filed.
3. Board of Health is a "person" as that term is defined in IC 22-9-1-3(a).
4. Board of Health is a "person as that term is defined in IC 22-9-1-3(a).
5. Board of Health committed a "discriminatory practice" as that term is defined in IC 22-9-1-3(1) in that Williams has shown the following (See *McDonnell-Douglas Corp. v. Green*, 411 U.S. 792 5FEP 965 (1973):
 - a. She is female.
 - b. She applied and was considered for a position for which Board of Health was seek applicants.
 - c. She was qualified for the position.
 - d. Despite her qualifications, she was rejected for the position.
 - e. A less qualified male was selected for the position.
 - f. Board of Health's stated reason for selecting the male over Williams are in fact pretextual.
6. As a result of discriminatory treatment of Williams by Board of Health, Williams lost salary in the amount of six hundred ninety two dollars and sixteen cents (\$692.16).
7. Any Finding of Fact which should have been deemed to be a Conclusion of Law is hereby adopted as such.

ORDER

1. Health board shall cease and desist from excluding females from equal opportunities in employment by selecting male applicants with less qualifications than female applicants to fill vacant positions.
2. Health Board shall pay to Williams six hundred ninety two dollars and sixteen cents (\$692.16), within thirty (30) days of receipt of notice that a majority of the Commission has approved this Order.

Dated: September 11, 1979